1256.

SUPREME COURT OF THE UNITED STATES.

No. 181.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

JAMES A. GIRAULT ET AL.

IN ERROR TO THE DISTRICT COURT UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

INDEX.

	Original.	Print.
Summons and marshal's return	1	2
Summons and marshal's return	2	3
Declaration	3	4
Instrument sued on	5	5
Alias summons ordered	5	6
Alias summons and marshal's return	6	6
Replications, demurrers, &c.	8	8
Judgment	11	11
Clerk's certificate	12	11
Writ of error	13	11
Citation and service	14	12

J. & G. S. Gideon, Printers.

Exemplification.

THE UNITED STATES
vs.
JAMES A. GIRAULT ET AL. } 43.

Pleas held at a district court of the United States, for the northern district of Mississippi, began and held at the town of Pontotoc in said district, on the first Monday of December, A. D. 1843; present, the Hon. Samuel J. Gholson, judge of said court.

Be it remembered, that on the 9th day of October, A. D. 1843, the United States of America sued out of the office of the clerk of the district court of the United States, for the northern district of Mississippi, their two certain summonses in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

We command you without delay to summons James A. Girault, William M. Gwin, Hay Battle Harrison, and Alexander J. McMurtry, that they be and appear before the district court of the United States, to be held at the town of Pontotoc, in and for the northern district of Mississippi, on the first Monday of December next, to answer to the United States of America of a plea, that they render unto them, the said plaintiffs, the sum of one hundred thousand dollars, which to them they owe, and from them unjustly detain, to their damage twenty-five thousand dollars, (as it is said,) and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the first Monday of June, A. D. 1843, and the 67th year of the independence of the United States.

[L. S.]

Issued the 9th day of October, A. D. 1843.

G. M. RAGSDALE, *Clerk*.

Which said summons is endorsed as follows, to wit:

This is an action of defendant, and is founded upon a writing obligatory made by the defendants to the plaintiffs on the eighth day of July, A. D. 1838, for the sum of one hundred thousand dollars. Eight thousand nine hundred and fifty-two dollars and thirty-seven cents is the amount of money actually demanded in this action, together with the interest thereon, from the 2d of June, A. D. 1840, it being the amount for which the defendants are liable to the plaintiffs, on account of the defalcation of the defendant, James A. Girault, as receiver of public moneys. Declaration filed at the time of issuing this writ. No

bail required. Judgment required at the return term. This writ, and the one directed to the marshal of the southern district of Mississippi, against the same parties and of the same date, are for one and the same cause of action.

O. F. BLEDSOE, *U. S. att'y.*

Upon which said summons the marshal made the following return, to wit:

Received November 14, 1843, executed on J. A. Girault, November 24th, 1843; the other defendants are not residents of this district.

Serving, &c., $2 50, copy 50 - -	$3 00
Mileage - - - - -	5 00
	$8 00

A. K. McCLUNG, *mar. no. dist. Miss.*
By SAM. W. CARR, *D. M.*

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you without delay to summons James A. Girault, William M. Gwinn, Hay Battle Harrison, and Alexander J. McMurtry, that they be and appear before the district court of the United States, to be held at the town of Pontotoc, in and for the northern district of Mississippi, on the first Monday of December next, to answer to the United States of America of a plea, that they render unto the said plaintiffs the sum of one hundred thousand dollars, which to them they owe, and from them unjustly detain, to their damage five thousand dollars, as it is said, and that they do file their plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Missis-
[L. S.] sippi, at Pontotoc, the first Monday of June, A. D. 1843, and the 67th year of the independence of the United States.

Issued October 9th, 1843.

G. M. RAGSDALE, *Clerk.*

Which said last summons is endorsed as follows, to wit:

This is an action for debt, and is founded on a writing obligatory made by the defendants to the plaintiffs, on the eighth day of July, A. D. 1838, for the sum of one hundred thousand dollars. Eight thousand nine hundred and fifty-two dollars and thirty-seven cents is the amount of money actually demanded in this action, together with the interest thereon, from the 2nd of June, A. D. 1840, it being the amount for which the defendants are liable to the plaintiffs on account of the defalcation of the defendant, James A. Girault, as receiver of public moneys. Declaration filed at the time of issuing this writ. No bail

required. Judgment required at the return term. This writ, and the one directed to the marshal of the northern district of Mississippi, against the same parties and of the same date, are for one and the same cause of action.

O. F. BLEDSOE, *U. S. att'y.*

Upon which last summons the marshal made the following return, to wit:

Received 20th October, 1843.

A. MILLER, *marshal.*

Executed October 30th, 1843, on Hay Battle Harrison, personally; on A. J. McMurtry, November 2nd, 1843.

ANDERSON MILLER, *marshal.*
By his deputy W. S. MILLER.

James A. Girault not found in my district, November 19th, 1843.

ANDERSON MILLER, *marshal.*
By Z. P. WARDELL, *D. M.*

Executed on W. M. Gwinn, by leaving a copy at his residence, in Vicksburg, on the 10th November, 1843.

AND. MILLER, *marshal.*
By N. G. WATTS, *deputy.*

Marshal Miller's Fees.

Mileage - - -	$25 00
Exg. writs and copies - -	8 00
	$33 00

Plaintiffs' declaration filed October 9th, 1843, in the words and figures following, to wit:

District court, for the northern district of Mississippi, December term, A. D. 1843.

The United States of America, by attorney, complain of James A. Girault, William M. Gwinn, Hay Battle Harrison, and Alexander J. McMurtry, being in the custody of the marshal, &c., of a plea that they render unto the said plaintiffs the sum of one hundred thousand dollars, which to them they owe, and from them unjustly detain.

For that whereas the said defendants heretofore, to wit, on the eighth day of July, A. D. 1838, at, to wit, in the district aforesaid, by the way and style of Jas. A. Girault, Wm. M. Gwinn, A. J. McMurtry, and H. B. Harrison, made their certain writing obligatory, sealed with their seals, and now here to the court shown, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid; by which said writing obligatory the said defendants then and there acknowledged themselves to be jointly and severally held and firmly bound unto the said plaintiffs in the sum of one hundred thousand dollars, above demanded to be paid to the said plaintiffs in money of the United States; which said writing obligatory was and is subject to a condition

thereunder written, to wit, that whereas the President of the United States hath, pursuant to law, appointed the said James A. Girault receiver of public money for the district of lands subject to sale at Chocchuma, in the state of Mississippi, for the term of four years from the 31st day of May, 1838, by commission bearing date the 2nd day of June, 1838. Now, therefore, if the said James A. Girault shall faithfully execute and discharge the duties of his office, then the above obligation be void and of none effect, otherwise it shall abide and remain in full force and virtue, as by the said writing obligatory and the condition thereof will more fully and at large appear. Nevertheless the said plaintiffs in fact say, that the said James A. Girault hath not faithfully executed and discharged the duties of his said office of receiver of public money as aforesaid specified; that on the second day of June, A. D. 1840, the said James A. Girault, as receiver of public money as aforesaid, had received a large amount of public money, to wit, the sum of eight thousand nine hundred and fifty-two dollars and thirty-seven cents, which said sum of money he, the said James A. Girault, has hitherto wholly neglected and refused, and still neglects and refuses, to pay to the said plaintiffs, contrary to the form and effect of the said writing obligatory, and of the said condition thereof; by reason of which said breach the said writing obligatory became forfeited, whereby an action hath accrued to the said plaintiffs to demand and have of and from the said defendants the *the* said sum of one hundred thousand dollars above demanded. Yet the said defendants, although often requested so to do, have not as yet paid the said sum of money above demanded to the said plaintiffs, but to pay the same or any part thereof have hitherto wholly neglected and refused, and still neglect and refuse so to do, to the damage of the said plaintiffs twenty-five thousand dollars; and therefore they sue.

O. F. BLEDSOE, *U. S. att'y.*

Copy of instrument sued on, to wit:

Know all men by these presents, that we, James A. Girault, William M. Gwin, Hay Battle Harrison, and Alexander J. McMurtry, are held and firmly bound, unto the United States of America, in the full and just sum of one hundred thousand dollars, [lawful] money of the United States; to which payment well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators, firmly by these present.

Sealed with our seals, and dated this eighth day of July, in the year of our Lord one thousand eight hundred and thirty-eight.

The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said James A. Girault receiver of public money for the district of lands subject to sale at Chocchuma, in the State of Mississippi, for the term of four years, from the 31st day of May, 1838, by commission bearing date the 2d day of June, 1838. Now, therefore, if the said James A. Girault shall faithfully execute and discharge the duties of his office,

then the above obligation to be void and of none effect, otherwise it shall abide and remain in full force and virtue.

JAMES. A. GIRAULT, [SEAL.]
WILLIAM M. GWIN, [SEAL.]
A. J. McMURTRY, [SEAL.]
H. B. HARRISON. [SEAL.]

Sealed and delivered in presence of—
J. M. WILLIAMS,
O. METCALFE.

Approved—General Land Office, 16th August, 1838.
JOHN M. MOORE, *Commissioner*.

Afterwards, to wit, on the 9th day of December, 1843, being a day of the December term of said court, the following proceedings were had in the foregoing cause, to wit:

THE UNITED STATES
vs. } 43.
JAMES A. GIRAULT ET AL.

Saturday, December the 9th, 1843.

It is ordered by the court that an alias summons issue in this case, and that this cause be continued until the next term hereof.

In obedience to which said order of court an alias summons issued, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you, as we have heretofore done, without delay, to summons Jas. A. Girault, William M. Gwin, Hay Battle Harrison, and Alexander J. McMurtry, that they be and appear before the district court of the United States, to be held at the town of Pontotoc, in and for the northern district of Mississippi, on the first Monday of June next, to answer to the United States of America of a plea, that they render unto them, the said plaintiffs, the sum of one hundred thousand dollars, which to them they owe, and from them unjustly detain, to their damage five thousand dollars; and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default; and have then there this writ.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at
[L. S.] Pontotoc, the first Monday of December, A. D. 1843, and 68th year of the independence of the United States.

Issued 8th July, 1844.

G. M. RAGSDALE, *Clerk*.

Which said alias summons is endorsed as follows, to wit:

This is an action of debt, and is founded on a writing obligatory made by the defendants to the plaintiffs on the 8th day of July, A. D. 1838, for the sum of one hundred thousand dollars. Eight thousand nine hundred and fifty-two dollars and thirty-seven cents is the amount of money actually demanded in this action, together with the interest thereon from the 2d of June, A. D. 1840, it being the amount for which the defendants are liable to the plaintiffs on account of the defalcation of the defendant, James A. Girault, as receiver of public moneys.

Declaration filed at the time of issuing former writ. Judgment will be required at the return term hereof. No bail required.

O. F. BLEDSOE,
United States Attorney.

The former writ having been duly executed on all the defendants, except William M. Gwin, this is to be executed on him only.

G. M. RAGSDALE, *Clerk.*

Upon which said alias summons the marshal made the following return, to wit:

Executed on W. M. Gwin by leaving copy at his residence, April 25th, 1844.

AND. MILLER, *Marshal.*
By N. G. WATT, *Deputy.*

Marshal's fees—Mileage - - - -		$5 50
Service and ent. and return		2 50
Copy - - - -		50
		$8 50

Afterwards, to wit, on the 8th day of June, 1844, being a day of the June term of said court, said cause was continued thus:

THE UNITED STATES vs. JAMES A. GIRAULT ET AL. } 43.

Saturday, June the 8th, 1844.

On affidavit of defendant, it is ordered by the court that this cause be continued until the next term hereof.

Proceeding had in the foregoing cause at the December term of said court, 1844, in the words following, to wit:

THE UNITED STATES vs. JAMES A. GIRAULT ET AL. } 43.

Thursday, December the 5th, 1844.

On application of plaintiffs, by attorney, it is ordered by the court that this cause be continued until the next term thereof.

Proceedings had in said cause at the June term, 1845, of said court, to wit:

THE UNITED STATES
vs.
JAMES A. GIRAULT ET AL. } 43.

Wednesday, June the 4th, 1845.

Upon application of defendants, it is ordered by the court that this cause be continued, and that plaintiffs recover of said defendants the costs which have accrued hereon at the present term.

Proceedings had in said cause at the December term of said court, 1845, in the words following, to wit:

THE UNITED STATES
vs.
JAMES A. GIRAULT ET AL. } 43.

Thursday, December the 4th, 1845.

Upon application of defendants, it is ordered that this cause be continued until the next term of this court.

Proceedings had at June term, 1846, of said court, as follows, to wit:

THE UNITED STATES
vs.
JAMES A. GIRAULT AND OTHERS. } 43.

Wednesday, June the 3d, 1846.

By consent of parties, it is ordered by the court that this cause be continued until the next term thereof.

Proceedings had in said court, at the December term of said court, 1846, to wit:

THE UNITED STATES
vs.
JAMES A. GIRAULT ET AL. } 43.

Thursday, December the 10th, 1846.

Upon affidavits of defendants, it is ordered by the court that this cause be continued until the next term hereof.

Pleas, replications, demurrers, &c.

(No date of filing,) in the words and figures following, to wit:

THE UNITED STATES OF AMERICA:

District court of the United States, for the northern district of Mississippi, June term, 1847.

JAMES A. GIRAULT, William M. Gwin, Hay Battle Harrison, and Alexander McMurtry, ats.
THE UNITED STATES. }

No. 1. And the said defendants, William M. Gwin, Hay Battle Harrison, and Alexander McMurtry, come and defend the wrong and injury, when, where, &c., and for plea say, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against them, because

they say that after making the said official bond in the said declaration mentioned, and before the commencement of this suit, to wit, on the twenty-fifth day of September, eighteen hundred and forty, at, to wit, in the district aforesaid, the said James A. Girault, and one John H. McRae, Anthony W. Bartlett, George R. Girault, Oren C. Wilson, and James Y. Blocker, made and sealed, and as their act and deed delivered to the said plaintiffs their certain writing obligatory, in the penal sum of one hundred thousand dollars, lawful money, to be paid to the United States, reciting that the President of the United States had, pursuant to law, appointed the said James A. Girault receiver of public moneys at Chocchuma, Mississippi, and had in due form of law caused to be issued to him as such a commission bearing date the second day of June, anno domini one thousand eight hundred and thirty-eight, which was also conditioned, that if the said James A. Girault had truly and faithfully executed and discharged, and should truly and faithfully continue to execute and discharge, all the duties of said office according to the laws of the United States, and moreover had well and truly and faithfully kept, and should well and truly and faithfully keep, safely, without loaning or using, all the public money collected by him, or otherwise, at any time placed in his hands and custody, till the same had been or should be ordered by the public department or officer of the Government to be transferred or paid out; and when such order for transfer had been, or should be received, had faithfully and promptly made, and should faithfully and promptly make, as directed; and had done, and should do and perform, all other duties as fiscal agent for the Government, which had been or should be imposed by any act of Congress, or by any regulation of the Treasury Department, made in conformity to law; and also had done and performed, and should do and perform, all acts and duties required by law, or by direction of any of the Executive Departments of the Government, as agent for paying pensions, or for making any other disbursements, which either of the heads of those departments might be required by law to make, and which were of a character to be made by a depository constituted by an act of Congress, entitled "An act to provide for the collection, safe-keeping, transfer, and disbursement of the public revenue," approved 4th July, 1840, constituting with the other official duties imposed upon him, the said plaintiffs agreed to accept and receive, and did then and there receive and accept, of and from the said James A. Girault, the said last mentioned bond and condition of the said James A. Girault, John H. McRae, Anthony W. Bartlett, George R. Girault, Oren E. Wilcox, and James Y. Blocker, in full lieu, discharge, and satisfaction of the said writing obligatory and condition in the plaintiffs' declaration mentioned; and this the said defendants, William M. Gwin, Hay Battle Harrison, and Alexander McMurtry are ready to verify; wherefore they pray judgment, if to have or maintain their aforesaid action thereof against them the said plaintiffs ought.

WAUL, GHOLSON, AND COCKE,
Attorneys for Defendants.

U. STATES *vs.* GIRAULT.

2. And by leave of the court first had and obtained the defendants, except Girault, (served with process,) say actio non, because they say that heretofore, to wit, on the second day of June, 1840, and on several days before that day, the said James A. Girault issued receipts as receiver of money paid for certain lands therein specified, and so returned, at the times aforesaid, to the Treasury Department of the United States, to the amount of ten thousand dollars, and of which the amount in the declaration mentioned is part and parcel. And these defendants say, that the said ten thousand dollars, and no part thereof, was ever paid to or collected by him the said James A. Girault, which these defendants are ready to verify and prove; wherefore they pray judgment if the said plaintiffs shall have their action against them.

3. And for further plea in this behalf the defendants heretofore mentioned say actio non, because they say that the said James A. Girault caused to be entered, for his own use, several parcels of land, amounting to eight thousand acres, and gave and issued receipts for money paid therefor on the 2nd June, 1840, and on divers other days before that time, and returned an account to the Treasury Department of the United States of the money in said receipts specified, to the amount of ten thousand dollars; of which amount the sum mentioned in plaintiffs' declaration is part and parcel. And the said defendants aver that the said moneys, and no part thereof, was ever paid or deposited in said office by the said Girault, or any one for him; and this the defendant is ready to verify; whereof they pray judgment.

4. And for further plea in this behalf the said defendants say, the plaintiffs ought not to have or maintain their action aforesaid against them, because they say that no public moneys of the United States came to the hands of the said James A. Girault, as such receiver, after the execution of said bond, nor were there any such public moneys for the payment of which the defendants were chargeable by virtue of the said bond, received by him prior to the execution of the same, remaining in the hands of said receiver in his official capacity at the time of the execution of said bond, or at any time thereafter, which had not been paid or accounted for according to law before the commencement of this suit, which the defendants are ready to verify; wherefore they pray judgment, &c.

WAUL & COCKE, *for defendants.*

District court, for the northern district of Mississippi.

THE UNITED STATES OF AMERICA }
vs. }
JAMES A. GIRAULT et al. }

And the said plaintiffs, as to the said pleas of the said defendants by them firstly, secondly, thirdly, and fourthly, above pleaded, say that the said several pleas and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in

law to bar or preclude the said plaintiffs from having or maintaining their aforesaid action thereof against the said defendants, and that the said plaintiffs are not bound by law to answer the same. And this the said plaintiffs are ready to verify; wherefore, by reason of the said pleas in this behalf, the said plaintiffs pray judgment, and his debt aforesaid, together with their damages by them sustained on occasion of the detention thereof, to be adjudged to them, &c.

O. F. BLEDSOE,
U. S. atty. for N. D. Miss.

And the said defendants say, the matters and things set forth in said pleas are sufficient in law to bar the plaintiffs' recovery.

WAUL, *for defendant.*

Afterwards, to wit, on the 10th day of June, being a day of the June term, 1847, of said court, the following proceedings were had in the aforesaid cause, to wit:

Thursday, June 10th, 1847.

THE UNITED STATES
vs. } 43.
JAMES A. GIRAULT et al.

This day came the parties, by their attorneys, and thereupon came on to be heard plaintiffs' demurrer to defendants' first, second, third, and fourth pleas; and, after argument, it is considered by the court that said demurrer be and the same is hereby sustained as to said first plea, and overruled as to said second, third, and fourth pleas; and that the said plaintiffs be barred from having or maintaining their aforesaid action thereof against the said defendants on account of the said matters alleged in the said second, third, and fourth pleas; and that the said defendants go hence without day.

UNITED STATES OF AMERICA,
Northern district of Mississippi:

I, Gabriel M. Ragsdale, clerk of the district court of the United States for the northern district of Mississippi, do hereby certify, that the above and foregoing eleven pages contain a full, true, and complete transcript of the record and proceedings in the aforesaid case of the United States vs. Girault et al., in said district court.

[SEAL.] Given under my hand and the seal of said court, at office, in Pontotoc, this the 1st day of November, A. D. 1847.

G. M. RAGSDALE, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judge of the district court of the United States for the northern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said district court before you, between the United States of America, plaintiffs, and James A. Girault,

William M. Gwin, Hay Battle Harrison, and Alexander J. McMurtry, defendants, a manifest error hath happened to the great damage of the said United States of America, as by their complaint appears. And it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are therefore hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, which of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of said Supreme Court of the United States, the first Monday of December,
[SEAL.] A. D. 1846, and of the independence of the United States the 71st year.

Issued the 27th day of October, A. D. 1847.

G. M. RAGSDALE,
Clerk of the district court of the United States, for the northern district of Mississippi.

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

To James A. Girault, William M. Gwin, Hay Battle Harrison, and Alexander J. McMurtry, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States, for the northern district of Mississippi, wherein the United States of America are plaintiffs and you are defendants in error, to show cause, if any there be, why the judgment, in said writ of error mentioned, should not be corrected, and speedy justice not be done to the parties in that behalf.

Witness Samuel J. Gholson, judge of the district court of the United States for the northern district of Mississippi, at Pontotoc, this the 27th day of October, in the year of our Lord one thousand eight hundred and forty-seven, and of American independence the 72d.

S. J. GHOLSON.

Jackson, Miss., 10th Nov., 1847. I do hereby acknowledge due service of the within citation.

STEPHEN COCKE,
Attorney for the defendants.

Filed 4 Dec., 1848.